

EXHIBITS TO DECLARATION OF SONG DIHUANG

EXHIBIT 5

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中华人民共和国全民所有制工业企业法

(1988年4月13日第七届全国人民代表大会第一次会议通过)

1988年4月13日中华人民共和国主席令第3号公布)

第一章 总 则

第一条 为保障全民所有制经济的巩固和发展,明确全民所有制工业企业的权利和义务,保障其合法权益,增强其活力,促进社会主义现代化建设,根据《中华人民共和国宪法》,制定本法。

第二条 全民所有制工业企业(以下简称企业)是依法自主经营、自负盈亏、独立核算的社会主义商品生产的经营单位。

企业的财产属于全民所有,国家依照所有权和经营权分离的原则授予企业经营管理。企业对国家授予其经营管理的财产享有占有、使用和依法处分的权利。

企业依法取得法人资格,以国家授予其经营管理的财产承担民事责任。

企业根据政府主管部门的决定,可以采取承包、租赁等经营责任制形式。

第三条 企业的根本任务是:根据国家计划 and 市场需求,发展商品生产,创造财富,增加积累,满足社会日益增长的物质和文化生活需要。

第四条 企业必须坚持在建设社会主义物质文明的同时,建设社会主义精神文明,建设有理想、有道德、有文化、有纪律的职工队伍。

第五条 企业必须遵守法律、法规,坚持社会主义方向。

第六条 企业必须有效地利用国家授予其经营管理的财产,实现资产增值;依法缴纳税金、费用、利润。

第七条 企业实行厂长(经理)负责制。

厂长依法行使职权,受法律保护。

第八条 中国共产党在企业中的基层组织，对党和国家的方针、政策在本企业的贯彻执行实行保证监督。

第九条 国家保障职工的主人翁地位，职工的合法权益受法律保护。

第十条 企业通过职工代表大会和其他形式，实行民主管理。

第十一条 企业工会代表和维护职工利益，依法独立自主地开展工作。企业工会组织职工参加民主管理和民主监督。

企业应当充分发挥青年职工、女职工和科学技术人员的作用。

第十二条 企业必须加强和改善经营管理，实行经济责任制，推进科学技术进步，厉行节约，反对浪费，提高经济效益，促进企业的改造和发展。

第十三条 企业贯彻按劳分配原则。在法律规定的范围内，企业可以采取其他分配方式。

第十四条 国家授予企业经营管理的财产受法律保护，不受侵犯。

第十五条 企业的合法权益受法律保护，不受侵犯。

第二章 企业的设立、变更和终止

第十六条 设立企业，必须依照法律和国务院规定，报请政府或者政府主管部门审核批准。经工商行政管理部门核准登记、发给营业执照，企业取得法人资格。

企业应当在核准登记的经营范围內从事生产经营活动。

第十七条 设立企业必须具备以下条件：

- (一) 产品为社会所需要。
- (二) 有能源、原材料、交通运输的必要条件。
- (三) 有自己的名称和生产经营场所。
- (四) 有符合国家规定的资金。
- (五) 有自己的组织机构。
- (六) 有明确的经营范围。
- (七) 法律、法规规定的其他条件。

第十八条 企业合并或者分立，依照法律、行政法规的规定，由政府或者政府主管部门批准。

第十九条 企业由于下列原因之一终止：

- (一) 违反法律、法规被责令撤销。
- (二) 政府主管部门依照法律、法规的规定决定解散。

(三) 依法被宣告破产。

(四) 其他原因。

第二十条 企业合并、分立或者终止时，必须保护其财产，依法清理债权、债务。

第二十一条 企业的合并、分立、终止，以及经营范围等登记事项的变更，须经工商行政管理部门核准登记。

第三章 企业的权利和义务

第二十二条 在国家计划指导下，企业有权自行安排生产社会需要的产品或者为社会提供服务。

第二十三条 企业有权要求调整没有必需的计划供应物资或者产品销售安排的指令性计划。

企业有权接受或者拒绝任何部门和单位在指令性计划外安排的生产任务。

第二十四条 企业有权自行销售本企业的产品，国务院另有规定的除外。

承担指令性计划的企业，有权自行销售计划外超产的产品和计划内分成的产品。

第二十五条 企业有权自行选择供货单位，购进生产需要的物资。

第二十六条 除国务院规定由物价部门和有关主管部门控制价格的以外，企业有权自行确定产品价格、劳务价格。

第二十七条 企业有权依照国务院规定与外商谈判并签订合同。

企业有权依照国务院规定提取和使用分成的外汇收入。

第二十八条 企业有权依照国务院规定支配使用留用资金。

第二十九条 企业有权依照国务院规定出租或者有偿转让国家授予其经营管理的固定资产，所得的收益必须用于设备更新和技术改造。

第三十条 企业有权确定适合本企业情况的工资形式和奖金分配办法。

第三十一条 企业有权依照法律和国务院规定录用、辞退职工。

第三十二条 企业有权决定机构设置及其人员编制。

第三十三条 企业有权拒绝任何机关和单位向企业摊派人力、物力、财力。除法律、法规另有规定外，任何机关和单位以任何方式要求企业提供人力、物力、财力的，都属于摊派。

第三十四条 企业有权依照法律和国务院规定与其他企业、事业单位联营，向其他企业、事业单位投资，持有其他企业的股份。

企业有权依照国务院规定发行债券。

第三十五条 企业必须完成指令性计划。

企业必须履行依法订立的合同。

第三十六条 企业必须保障固定资产的正常维修、改进和更新设备。

第三十七条 企业必须遵守国家关于财务、劳动工资和物价管理等方面的规定，接受财政、审计、劳动工资和物价等机关的监督。

第三十八条 企业必须保证产品质量和服务质量，对用户和消费者负责。

第三十九条 企业必须提高劳动效率，节约能源和原材料，努力降低成本。

第四十条 企业必须加强保卫工作，维护生产秩序，保护国家财产。

第四十一条 企业必须贯彻安全生产制度，改善劳动条件，做好劳动保护和环境保护工作，做到安全生产和文明生产。

第四十二条 企业应当加强思想政治教育、法制教育、国防教育、科学文化教育和技术业务培训，提高职工队伍的素质。

第四十三条 企业应当支持和奖励职工进行科学研究、发明创造，开展技术革新、合理化建议和社会主义劳动竞赛活动。

第四章 厂长

第四十四条 厂长的产生，除国务院另有规定外，由政府主管部门根据企业的情况决定采取下列一种方式：

（一）政府主管部门委任或者招聘。

（二）企业职工代表大会选举。

政府主管部门委任或者招聘的厂长人选，须征求职工代表的意见；企业职工代表大会选举的厂长，须报政府主管部门批准。

政府主管部门委任或者招聘的厂长，由政府主管部门免职或者解聘，并须征求职工代表的意见；企业职工代表大会选举的厂长，由职工代表大会罢免，并须报政府主管部门批准。

第四十五条 厂长是企业的法定代表人。

企业建立以厂长为首的生产经营管理系统。厂长在企业中处于中心地位，对企业的物质文明建设和精神文明建设负有全面责任。

厂长领导企业的生产经营管理工作，行使下列职权：

（一）依照法律和国务院规定，决定或者报请审查批准企业的各项计划。

(二) 决定企业行政机构的设置。

(三) 提请政府主管部门任免或者聘任、解聘副厂级行政领导干部。法律和国务院另有规定的除外。

(四) 任免或者聘任、解聘企业中层行政领导干部。法律另有规定的除外。

(五) 提出工资调整方案、奖金分配方案和重要的规章制度，提请职工代表大会审查同意。提出福利基金使用方案和其他有关职工生活福利的重大事项的建议，提请职工代表大会审议决定。

(六) 依法奖惩职工；提请政府主管部门奖惩副厂级行政领导干部。

第四十六条 厂长必须依靠职工群众履行本法规定的企业的各项义务，支持职工代表大会、工会和其他群众组织的工作，执行职工代表大会依法作出的决定。

第四十七条 企业设立管理委员会或者通过其他形式，协助厂长决定企业的重大问题。管理委员会由企业各方面的负责人和职工代表组成。厂长任管理委员会主任。

前款所称重大问题：

(一) 经营方针、长远规划和年度计划、基本建设方案和重大技术改造方案，职工培训计划，工资调整方案，留用资金分配和使用方案，承包和租赁经营责任制方案。

(二) 工资列入企业成本开支的企业人员编制和行政机构的设置和调整。

(三) 制订、修改和废除重要规章制度的方案。

上述重大问题的讨论方案，均由厂长提出。

第四十八条 厂长在领导企业完成计划、提高产品质量和服务质量、提高经济效益和加强精神文明建设等方面成绩显著的，由政府主管部门给予奖励。

第五章 职工和职工代表大会

第四十九条 职工有参加企业民主管理的权利，有对企业的生产和工作提出意见和建设的权利；有依法享受劳动保护、劳动保险、休息、休假的权利；有向国家机关反映真实情况，对企业领导干部提出批评和控告的权利。女职工有依照国家规定享受特殊劳动保护和劳动保险的权利。

第五十条 职工应当以国家主人翁的态度从事劳动，遵守劳动纪律和规章制度，完成生产和工作任务。

第五十一条 职工代表大会是企业实行民主管理的基本形式，是职工行使民主管理权力的机构。

职工代表大会的工作机构是企业的工会委员会。企业工会委员会负责职工代表大会日常工作。

第五十二条 职工代表大会行使下列职权：

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(一) 听取和审议厂长关于企业的经营方针、长远规划、年度计划、基本建设方案、重大技术改造方案、职工培训计划、留用资金分配和使用方案、承包和租赁经营责任制方案的报告，提出意见和建议。

(二) 审查同意或者否决企业的工资调整方案、奖金分配方案、劳动保护措施、奖惩办法以及其他重要的规章制度。

(三) 审议决定职工福利基金使用方案、职工住宅分配方案和其他有关职工生活福利的重大事项。

(四) 评议、监督企业各级行政领导干部，提出奖惩和任免的建议。

(五) 根据政府主管部门的决定选举厂长，报政府主管部门批准。

第五十三条 车间通过职工大会、职工代表组或者其他形式实行民主管理。工人直接参加班组的民主管理。

第五十四条 职工代表大会应当支持厂长依法行使职权，教育职工履行本法规定的义务。

第六章 企业和政府的关系

第五十五条 政府或者政府主管部门依照国务院规定统一对企业下达指令性计划，保证企业完成指令性计划所需的计划供应物资，审查批准企业提出的基本建设、重大技术改造等计划；任免、奖惩厂长，根据厂长的提议，任免、奖惩副厂级行政领导干部，考核、培训厂级行政领导干部。

第五十六条 政府有关部门按照国家调节市场、市场引导企业的目标，为企业提供服务，并根据各自的职责，依照法律、法规的规定，对企业实行管理和监督。

(一) 制定、调整产业政策，指导企业制定发展规划。

(二) 为企业的经营决策提供咨询、信息。

(三) 协调企业与其他单位之间的关系。

(四) 维护企业正常的生产秩序，保护企业经营管理的国家财产不受侵犯。

(五) 逐步完善与企业有关的公共设施。

第五十七条 企业所在地的县级以上地方政府应当提供企业所需的由地方计划管理的物资，协调企业与当地其他单位之间的关系，努力办好与企业有关的公共福利事业。

第五十八条 任何机关和单位不得侵犯企业依法享有的经营管理自主权；不得向企业摊派人力、物力、财力；不得要求企业设置机构或者规定机构的编制人数。

第七章 法律责任

第五十九条 违反本法第十六条规定，未经政府或者政府主管部门审核批准和工商行政管理部门核准登记，以企业名义进行生产经营活动的，责令停业，没收违法所得。

企业向登记机关弄虚作假、隐瞒真实情况的，给予警告或者处以罚款；情节严重的，吊销营业执照。

本条规定的行政处罚，由县级以上工商行政管理部门决定。当事人对罚款、责令停业、没收违法所得、吊销营业执照的处罚决定不服的，可以在接到处罚通知之日起十五日内向法院起诉；逾期不起诉又不履行的，由作出处罚决定的机关申请法院强制执行。

第六十条 企业因生产、销售质量不合格的产品，给用户和消费者造成财产、人身损害的，应当承担赔偿责任；构成犯罪的，对直接责任人员依法追究刑事责任。

产品质量不符合经济合同约定的条件的，应当承担违约责任。

第六十一条 政府和政府有关部门的决定违反本法第五十八条规定的，企业有权向作出决定的机关申请撤销；不予撤销的，企业有权向作出决定的机关的上一级机关或者政府监察部门申诉。接受申诉的机关应于接到申诉之日起三十日内作出裁决并通知企业。

第六十二条 企业领导干部滥用职权，侵犯职工合法权益，情节严重的，由政府主管部门给予行政处分；滥用职权、假公济私，对职工实行报复陷害的，依照《中华人民共和国刑法》第一百四十六条的规定追究刑事责任。

第六十三条 企业和政府有关部门的领导干部，因工作过失给企业和国家造成较大损失的，由政府主管部门或者有关上级机关给予行政处分。

企业和政府有关部门的领导干部玩忽职守，致使企业财产、国家和人民利益遭受重大损失的，依照《中华人民共和国刑法》第一百八十七条的规定追究刑事责任。

第六十四条 阻碍企业领导干部依法执行职务，未使用暴力、威胁方法的，由企业所在地公安机关依照《中华人民共和国治安管理处罚条例》第十九条的规定处罚；以暴力、威胁方法阻碍企业领导干部依法执行职务的，依照《中华人民共和国刑法》第一百五十七条的规定追究刑事责任。

扰乱企业的秩序，致使生产、营业、工作不能正常进行，尚未造成严重损失的，由企业所在地公安机关依照《中华人民共和国治安管理处罚条例》第十九条的规定处罚；情节严重，致使生产、营业、工作无法进行、造成严重损失的，依照《中华人民共和国刑法》第一百五十八条的规定追究刑事责任。

第八章 附 则

第六十五条 本法的原则适用于全民所有制交通运输、邮电、地质勘探、建筑安装、商业、外贸、物资、农林、水

利企业。

第六十六条 企业实行承包、租赁经营责任制的，除遵守本法规定外，发包方和承包方、出租方和承租方的权利、义务依照国务院有关规定执行。

联营企业、大型联合企业和股份企业，其领导体制依照国务院有关规定执行。

第六十七条 国务院根据本法制定实施条例。

第六十八条 自治区人民代表大会常务委员会可以根据本法和《中华人民共和国民族区域自治法》的原则，结合当地的特点，制定实施办法，报全国人民代表大会常务委员会备案。

第六十九条 本法自1988年8月1日起施行。

Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People

Promulgation date: 04-13-1988
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Department: NATIONAL PEOPLE'S CONGRESS
Subject: COMPANIES & ENTERPRISES

LAW OF THE PEOPLE'S REPUBLIC OF CHINA OF INDUSTRIAL ENTERPRISES OWNED BY THE WHOLE PEOPLE

(Adopted at the First Session of the Seventh National People's Congress and promulgated by Order No. 3 of the President of the People's Republic of China on April 13, 1988, and effective as of August 1, 1988)

CONTENTS

CHAPTER I GENERAL PROVISIONS

CHAPTER II THE ESTABLISHMENT, MODIFICATION AND TERMINATION OF THE ENTERPRISE

CHAPTER III RIGHTS AND OBLIGATIONS OF THE ENTERPRISE

CHAPTER IV THE FACTORY DIRECTOR

CHAPTER V THE STAFF AND WORKERS AND THE STAFF AND WORKERS' CONGRESS

CHAPTER VI THE RELATIONSHIP BETWEEN THE ENTERPRISES AND THE GOVERNMENT

CHAPTER VII LEGAL LIABILITY

CHAPTER VIII SUPPLEMENTARY PROVISIONS

CHAPTER I GENERAL PROVISIONS

Article 1. This Law is formulated in accordance with the Constitution of the People's Republic of China with a view to ensuring the consolidation and development of the economic sector under ownership by the whole people, defining the rights and obligations of industrial enterprises owned by the whole people, safeguarding their lawful rights and interests, enhancing their vitality and promoting socialist modernization.

Article 2. An industrial enterprise owned by the whole people (hereinafter referred to as the enterprise) shall be a socialist commodity production and operation unit which shall, in accordance with law, make its own managerial decisions, take full responsibility for its profits and losses and practise independent accounting.

7

The property of the enterprise shall be owned by the whole people, and shall be operated and managed by the enterprise with the authorization of the state in line with the principle of the separation of ownership and managerial authority. The enterprise shall enjoy the rights to possess, utilize and dispose of, according to law, the property which the state has authorized it to operate and manage.

The enterprise shall obtain the status of a legal person in accordance with law and bear civil liability with the property which the state has authorized it to operate and manage.

The enterprise may, in accordance with the decision of the competent department of the government, adopt contract, leasing or other forms of the system of managerial responsibility.

Article 3. The fundamental task of the enterprise shall be the development of commodity production, creation of wealth, increase of savings and satisfaction of society's growing material and cultural requirements by acting in line with state plans and market demands.

Article 4. While achieving socialist material growth, the enterprise must persistently promote socialist cultural and ideological progress and build up a contingent of well-educated and self-disciplined staff and workers with high ideals and moral integrity.

Article 5. The enterprise must observe the laws and regulations and keep to the socialist orientation.

Article 6. The enterprise must effectively utilize the property which the state has authorized it to operate and manage and realize the multiplication of its assets; the enterprise must, according to law, pay taxes and fees and hand in profits.

Article 7. The enterprise shall implement the system whereby the factory director (manager) assumes overall responsibility for the work of the enterprise.

The factory director shall exercise functions and powers according to law, which shall be protected by law.

Article 8. The grassroots organization of the Chinese Communist Party in the enterprise shall guarantee and supervise the implementation of the guiding principles and policies of the Party and the state in the enterprise.

Article 9. The state shall ensure that the staff and workers enjoy the status of the masters, and the lawful rights and interests of the staff and workers shall be protected by law.

Article 10. The enterprise shall, through the staff and workers' congress and other forms, practise democratic management.

Article 11. The trade union in the enterprise shall represent and safeguard the interests of the staff and workers and conduct its work independently according to law. The trade union in the enterprise shall organize the staff and workers for participation in democratic management and democratic supervision.

The enterprise shall bring into full play the role of the young staff and workers, the women staff and workers and

scientific and technical personnel.

Article 12. The enterprise must strengthen and improve its operation and management, implement the economic responsibility system, promote scientific and technological progress, practise economy, combat waste, improve economic results and further its own transformation and development.

Article 13. The enterprise shall implement the principle of distribution according to work. It may also adopt other forms of distribution within the scope prescribed by law.

Article 14. The property which the state has authorized the enterprise to operate and manage shall be protected by law and shall not be infringed upon.

Article 15. The lawful rights and interests of the enterprise shall be protected by law and shall not be infringed upon.

CHAPTER II THE ESTABLISHMENT, MODIFICATION AND TERMINATION OF THE ENTERPRISE

Article 16. The establishment of the enterprise must conform to the law and the relevant provisions of the State Council, and the application for the establishment must be submitted to the government or the competent department of the government for examination and approval. The enterprise shall obtain the status of a legal person after it is approved by, registers itself with and receives a business license from the administrative authorities for industry and commerce. The enterprise shall carry out its productive and operational activities within the approved and registered scope of operation.

Article 17. An enterprise must meet the following qualifications for its establishment:

- (1) Its products are needed by society;
- (2) It has access to the required energy sources, raw and processed materials, and communication and transportation facilities;
- (3) It possesses a name of its own and premises for production and operation;
- (4) It possesses funds in conformity with state provisions;
- (5) It possesses its own organizational structure;
- (6) It has a definite scope of operation; and
- (7) Other qualifications as provided by the laws and regulations.

Article 18. The merger of enterprises or the division of an enterprise shall be subject to approval by the government or the competent department of the government in accordance with the provisions of the laws and administrative rules and regulations.

Article 19. An enterprise shall be terminated for any of the following reasons:

- (1) being abolished due to its violation of the laws and regulations;
- (2) being dissolved by decision of the competent department of the government made in accordance with the provisions of the laws and regulations;
- (3) being declared bankrupt in accordance with law; or
- (4) other reasons.

Article 20. When an enterprise is merged with another enterprise or other enterprises or when it is divided or terminated, its property must be protected and its claims and debts shall be liquidated according to law.

Article 21. The modification of registered items such as the merger of enterprises and the division or termination of the enterprise, and the scope of operation shall be subject to approval by and registration with the administrative authorities for industry and commerce.

CHAPTER III RIGHTS AND OBLIGATIONS OF THE ENTERPRISE

Article 22. The enterprise shall, under the guidance of state plans, have the right to arrange on its own the production of products needed by society or the provision of services for society.

Article 23. The enterprise shall have the right to request for the adjustment of mandatory plans when the needed materials subject to planned allocation are unavailable or when no arrangements are made for product sales.

The enterprise shall have the right to accept or reject production assignments given by any department or unit outside the mandatory plans.

Article 24. The enterprise shall have the right to sell its products on its own, except as otherwise stipulated by the State Council.

An enterprise undertaking production according to a mandatory plan shall have the right to market for itself products manufactured in excess of the planned quota and products it retains as its share under the plan.

Article 25. The enterprise shall have the right to choose the suppliers for itself and purchase from them materials needed for production.

Article 26. The enterprise shall have the right to determine for itself the prices of its products and the charges for its services, except for those which, as stipulated by the State Council, are under the control of the price authorities and the relevant competent departments.

Article 27. The enterprise shall have the right to negotiate and sign contracts with foreign parties in accordance

with the provisions of the State Council.

The enterprise shall have the right to withdraw and use, according to the provisions of the State Council, the foreign exchange revenues it retains as its share.

Article 28. The enterprise shall have the right to budget and use its retained funds in accordance with the provisions of the State Council.

Article 29. The enterprise shall have the right, in accordance with the provisions of the State Council, to lease out or transfer against compensation the fixed assets that the state has authorized it to operate and manage, but the proceeds therefrom must be used for the renewal of equipment and technical transformation.

Article 30. The enterprise shall have the right to determine such forms of wages and methods of bonus distribution as are appropriate to its specific conditions.

Article 31. The enterprise shall have the right to employ or dismiss its staff members and workers in accordance with the provisions of the State Council.

Article 32. The enterprise shall have the right to decide on its organizational structure and the size of its personnel.

Article 33. The enterprise shall have the right to reject the exaction of its manpower, materials and financial resources in the form of apportionment by any state organ or unit. Except as otherwise stipulated by the laws and regulations, any demand made on the enterprise by any state organ or unit in any form for the provision of manpower, materials and financial resources shall be exaction by apportionment.

Article 34. The enterprise shall have the right, in accordance with law and the provisions of the State Council, to engage in joint operations with other enterprises or institutions, to invest in other enterprises or institutions and to hold shares in other enterprises. The enterprise shall have the right to issue bonds in accordance with the provisions of the State Council.

Article 35. The enterprise must fulfil the mandatory plans.

The enterprise must perform the contracts concluded according to law.

Article 36. The enterprise must ensure the normal maintenance of its fixed assets and upgrade and renew its equipment.

Article 37. The enterprise must observe state provisions concerning finance, labour and wages, price control, etc., and accept supervision by the financial, auditing, labour and wage, price and other administrative authorities.

Article 38. The enterprise must guarantee the quality of its products and services and be responsible to users and consumers.

Article 39. The enterprise must raise labour efficiency, economize the use of energy and of raw and processed materials and strive to reduce costs.

Article 40. The enterprise must strengthen its security work, maintain the order of production and protect state property.

Article 41. The enterprise must implement the system of safe production, improve labour conditions, do good work in labour protection and environmental protection, and carry on production in a safe and civilized manner.

Article 42. The enterprise shall strengthen ideological and political education, legal education, national defence education, scientific and cultural education as well as technical and vocational training so as to raise the quality of its staff and workers.

Article 43. The enterprise shall support its staff and workers in scientific research, invention and creation and activities for technical innovation, for making rationalization proposals and for socialist labour emulation, and reward them for such endeavours.

CHAPTER IV THE FACTORY DIRECTOR

Article 44. Except as otherwise stipulated by the State Council, the selection of the factory director shall be made by the competent department of the government in the light of the specific conditions of the enterprise by one of the following methods:

- (1) appointment by the competent department of the government or choice of an applicant on a competitive basis by the same department; or
- (2) election by the staff and workers' congress of the enterprise. With respect to the person to be appointed or the applicant to be chosen as factory director by the competent department of the government, the opinions of the staff and workers shall be solicited, with respect to the person elected as factory director by the staff and workers' congress of the enterprise, his appointment shall be reported to the competent department of the government for approval.

The removal or dismissal of the factory director appointed or chosen from applicants by the competent department of the government shall be decided upon by such department, while the opinions of representatives of the staff and workers shall be solicited; the recall of the factory director elected by the staff and workers' congress of the enterprise shall be decided by such congress and reported to the competent department of the government for approval.

Article 45. The factory director shall be the legal representative of the enterprise.

The enterprise shall establish a system of production, operation and management headed by the factory director. The factory director shall occupy the central position in the enterprise and assume overall responsibility for building up a materially developed and culturally and ideologically advanced enterprise.

The factory director shall exercise leadership in the production, operation and management of the enterprise by exercising the following functions and powers:

(1) to decide on the various plans of the enterprise or report them for examination and approval in accordance with law and the provisions of the State Council;

(2) to decide on the administrative setup of the enterprise;

(3) to propose to the competent department of the government the appointment or removal, employment or dismissal of leading administrative cadres at the level of a vice-director of the factory, except as otherwise stipulated by law and the provisions of the State Council;

(4) to appoint or remove, employ or dismiss the intermediate-level leading administrative cadres of the enterprise, except as otherwise stipulated by law;

(5) to propose plans for wage adjustment and bonus distribution and important rules and regulations, and refer them to the staff and workers' congress for examination and approval; to propose programmes for the use of the welfare fund and make suggestions regarding such other matters as are important for the well-being and benefits of the staff and workers, and to refer them to the staff and workers' congress for deliberation and decision; and

(6) to reward or punish the staff members and workers according to law; to submit to the competent department of the government proposals for rewarding or punishing leading administrative cadres at the level of a vice-director of the factory.

Article 46. The factory director must rely on the staff members and workers for the fulfilment of the obligations of the enterprise prescribed in this Law, support the work of the staff and workers' congress, the trade union and other public organizations, and implement the decisions made according to law by the staff and workers' congress.

Article 47. The enterprise shall establish a management committee or some other forms of organization to assist the factory director in making decisions on important issues of the enterprise. The management committee, with the factory director as its chairman, shall be composed of leading persons in charge of various aspects of the enterprise and representatives of the staff and workers.

The important issues as mentioned in the preceding paragraph shall include:

(1) the policy of operation, long-term and annual plans, programmes for capital construction and major technical transformation, plans for the training of the staff and workers, plans for wage adjustment, programmes for the distribution and use of the retained funds and programmes for contract and leasing systems of managerial responsibility.

(2) the size of the personnel of the enterprise whose wages are counted as cost of the enterprise and the establishment and adjustment of administrative organs; and

(3) programmes for the formulation, revision and abrogation of major rules and regulations.

Proposals for discussion of the foregoing important issues shall all be made by the factory director.

Article 48. Factory directors who have made outstanding achievements in leading the enterprises in fulfilling their plans, raising product or service quality, improving economic results or promoting cultural and ideological progress shall be rewarded by the competent department of the government.

CHAPTER V THE STAFF AND WORKERS AND THE STAFF AND WORKERS' CONGRESS

Article 49. The staff and workers of the enterprise shall have the right to participate in its democratic management; the right to put forward opinions and suggestions concerning its production and work; the right to enjoy, according to law, labour protection, labour insurance, rest and vacation; and the right to report the true situation to state organs and make criticisms and charges against the leading cadres of the enterprise. Women staff and workers shall have the right to enjoy special labour protection and labour insurance in accordance with the provisions of the state.

Article 50. The staff and workers should approach their work as the masters of the country that they are, observe labour discipline and the rules and regulations, and fulfil their tasks in production and work.

Article 51. The staff and workers' congress shall be the basic form for the practice of democratic management in the enterprise and the organ for the staff and workers to exercise their powers of democratic management.

The working organ of the staff and workers' congress shall be the trade union committee of the enterprise. The trade union committee of the enterprise shall be responsible for the day-to-day work of the staff and workers' congress.

Article 52. The staff and workers' congress shall exercise the following functions and powers:

(1) to hear and deliberate the factory director's reports on the policy of operation, long-term and annual plans, programmes for capital construction and major technical transformation, plans for the training of the staff and workers, programmes for the distribution and use of the retained funds and programmes for contract and leasing systems of managerial responsibility, and to put forward opinions and suggestions;

(2) to examine and endorse or to reject the enterprise's programmes for wage adjustment, programmes for bonus distribution, measures for labour protection, measures for awards and penalties and other important rules and regulations;

(3) to deliberate and decide on the programmes for the use of the staff and workers' welfare fund, programmes for the allocation of the staff and workers' housing and other important matters concerning the well-being and benefits of the staff and workers;

(4) to evaluate and supervise the leading administrative cadres at various levels of the enterprise and put forward suggestions for rewarding or punishing them and for their appointment or removal; and

(5) to elect, by decision of the competent department of the government, the factory director and report to such

department for approval.

Article 53. Democratic management shall be practised in workshops through the general meetings of the staff and workers, through the staff and workers representative groups or through other forms; the workers shall participate directly in the democratic management of shifts and groups.

Article 54. The staff and workers' congress shall support the factory director in exercising his functions and powers according to law and shall educate the staff and workers for the fulfilment of their obligations specified in this Law.

CHAPTER VI THE RELATIONSHIP BETWEEN THE ENTERPRISES AND THE GOVERNMENT

Article 55. The government or the competent department of the government shall, in accordance with the provisions of the State Council, issue unified mandatory plans to the enterprises, ensure the supply of materials which are subject to planned allocation and needed by the enterprises for the fulfilment of mandatory plans, examine and approve plans submitted by the enterprises for capital construction and major technical transformation, appoint or remove, reward or punish factory directors, appoint or remove, reward or punish leading administrative cadres at the level of a vice-director of a factory, as proposed by factory directors, and examine and train leading administrative cadres at the factory level.

Article 56. The relevant departments of the government shall, in conformity with the objective that the state regulates the market and the market guides the enterprises, provide services for the enterprises and exercise administration and supervision over the enterprises in line with their respective functions and in accordance with the provisions of the laws and regulations. These departments shall:

- (1) formulate and adjust industrial policies, and guide the enterprises in working out their development plans;
- (2) provide advice and information for the enterprises to make their operational decisions;
- (3) coordinate the relations between the enterprises and other units;
- (4) safeguard the normal production order of the enterprises, and protect from infringement the state property operated and managed by the enterprises; and
- (5) gradually improve the public facilities related to the enterprises

Article 57. The local governments at or above the county level in the locality of an enterprise shall provide it with the needed materials which are subject to local planning and control, coordinate the relations between the enterprises and other units in the locality, and strive to run well the public welfare undertakings related to the enterprises.

Article 58. No state organ or unit shall be permitted to encroach on the right which the enterprise enjoys according to law to make its own decisions in operation and management, or to exact manpower, materials or financial resources from the enterprise by way of apportionment, or to demand the establishment of an organ by the

enterprise or to determine the size of the personnel of an organ.

CHAPTER VII LEGAL LIABILITY

Article 59. Whoever has conducted productive and operational activities in the name of an enterprise in violation of the provisions of Article 16 of this Law, without prior examination and approval by the government or the competent department of the government and without approval by and registration with the administrative authorities for industry and commerce, shall be ordered to suspend his business operations, and his illegal earnings shall be confiscated.

An enterprise that practises fraud in dealing with the registration authorities and conceals the true situation from them shall be given a warning or punished with a fine; where the circumstances are serious, its business license shall be revoked.

The administrative punishment prescribed in this Article shall be decided upon by the administrative authorities for industry and commerce at or above the county level. If the party in question refuses to accept the decision on punishment in the form of a fine, the suspension of operations, the confiscation of illegal earnings or the revocation of the business license, it may file a suit in a court within 15 days of receiving the notification on the decision; if no suit is filed by the time limit and the decision is not complied with, the authorities that made the decision on punishment may apply to the court for compulsory enforcement.

Article 60. An enterprise that produces and sells substandard products and thereby causes property damage or physical injury to users and consumers shall be liable for damages; if a crime is constituted, the person or persons directly responsible shall be investigated for criminal responsibility according to law.

An enterprise whose product quality does not conform to the terms agreed upon in the economic contract shall be liable for breach of contract.

Article 61. If a decision of the government or the relevant department of the government violates the provisions of Article 58 of this Law, the enterprise shall have the right to apply to the authorities that made the decision for rescission. If no rescission is granted, the enterprise shall have the right to appeal to the authorities at the level next higher to the authorities that made the decision or to a supervisory department of the government. The authorities that accepts the appeal shall make a ruling and notify the enterprise of it within 30 days of receiving the appeal.

Article 62. Any leading cadre of the enterprise, who violates the lawful rights and interests of the staff and workers by abusing his power, where the circumstances are serious, shall be given an administrative sanction by the competent department of the government; any leading cadre of the enterprise who retaliates against and frames up charges against staff members or workers by abusing his power and using his public office for private ends shall be investigated for criminal responsibility in accordance with the provisions of Article 146 of the Criminal Law of the People's Republic of China.

Article 63. Any leading cadre of the enterprise or of the relevant department of the government who, due to faults in his work, causes relatively heavy losses to the enterprise and the state, shall be given an administrative sanction by the competent department of the government or the relevant state organ at a higher level.

Any leading cadre of the enterprise or of the relevant department of the government who, due to neglect of duty, causes the property of the enterprise or the interests of the state and the people to suffer heavy losses, shall be investigated for criminal responsibility in accordance with the provisions of Article 187 of the Criminal Law of the People's Republic of China.

Article 64. Whoever obstructs, without resorting to violence or threat, the enterprise leaders from carrying out their functions according to law, shall be punished by the public security organ in the locality of the enterprise in accordance with the provisions of Article 19 of the Regulations of the People's Republic of China on Administrative Penalties for Public Security; whoever by means of violence or threat obstructs the enterprise leaders from carrying out their functions according to law shall be investigated for criminal responsibility in accordance with the provisions of Article 157 of the Criminal Law of the People's Republic of China.

Whoever disturbs the order of the enterprise, thereby making it impossible for production, business operations and work to go on smoothly, but has not caused serious losses, shall be punished by the public security organ in the locality of the enterprise in accordance with the provisions of Article 19 of the Regulations of the People's Republic of China on Administrative Penalties for Public Security; if the circumstances are so serious that production, business operations and work cannot be carried on and serious losses are caused, he shall be investigated for criminal responsibility in accordance with the provisions of Article 158 of the Criminal Law of the People's Republic of China.

CHAPTER VIII SUPPLEMENTARY PROVISIONS

Article 65. The principles of this Law shall be applicable to enterprises owned by the whole people in communications and transportation, the postal and telecommunications service, geological exploration, construction and installation, commerce, foreign trade, materials supply, agriculture, forestry and water conservancy.

Article 66. If the enterprise implements the contract and leasing systems of managerial responsibility, the party awarding the contract and the contractor, the lessor and the lessee, with regard to their respective rights and obligations, shall implement the relevant provisions of the State Council, apart from abiding by the provisions of this Law.

With respect to the system of leadership in jointly operated enterprises, large-scale associated enterprises and stock enterprises, the relevant provisions of the State Council shall be implemented.

Article 67. The State Council shall, in accordance with this Law, formulate rules for implementation.

Article 68. The standing committees of the people's congresses of the autonomous regions may, in accordance with the principles of this Law and the Law of the People's Republic of China on Regional National Autonomy and in the light of the special features of their respective localities, formulate rules for implementation and report them to the Standing Committee of the National People's Congress for the record.

Article 69. This Law shall come into force as of August 1, 1988.